

HOUSE BILL 2006
By Overbey

AN ACT to amend Tennessee Code Annotated, Title 20,
Chapter 1, relative to class action lawsuits in civil
cases.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 20, Chapter 1, is amended by adding
the following language as a new section:

§ 20-1-120.

(a) No class of civil litigants shall be certified or recognized by any court
of this state unless there has been compliance with the procedures for
certification of the class set forth in this section.

(b) As soon as practicable after the commencement of an action in which
claims or defenses are purported to be asserted on behalf of or against a class,
or as soon as practicable after such assertions in an amended pleading, but in no
event prior to the time allowed by law for each party (including, but not limited to,
counterclaim, cross-claim, and third-party defendants) to file an answer or other
pleading responsive to the complaint, counterclaim, cross-claim, or third-party
claim, the court shall hold a conference among all named parties to the action for
the purpose of establishing a schedule, in the same manner and to the same
extent contemplated by Rule 16 of the Tennessee Rules of Civil Procedure for
any discovery in which the parties may wish to engage which is both allowed by
Rules 26 through 37 of the Tennessee Rules of Civil Procedure and germane to
the issue of whether the requested class should or should not be certified. At this
conference, the court may set a date for a hearing on the issue of class

certification, but such hearing may not be set sooner than ninety (90) days after the date on which the court issues its scheduling order pursuant to the conference unless a shorter time is agreed to by the parties.

(c) Upon motion of any party, the court shall, except for good cause shown and even then only if the interests of justice require that it not do so, stay all discovery directed solely to the merits of the claims or defenses in the action until the court shall have made its decision regarding certification of the class. In considering such a motion, the court shall consider whether any prejudice to the plaintiff exists because of the filing by the defendant of a motion for summary judgment pursuant to Rule 56 of the Tennessee Rules of Civil Procedure prior to the court's decision regarding class certification.

(d) The court shall, on motion of any party, hold a full evidentiary hearing on class certification. The hearing shall be recorded, and all named parties to the action shall be given notice of the date, time, and place of the hearing by written notification given to the party's attorney (or if appearing pro se, to the party) no later than sixty (60) days prior to the date set for the hearing. At the hearing, the parties shall be allowed to present, in the same manner as at trial, any admissible evidence in support of or in opposition to the certification of the class.

(e) When deciding whether a request class is to be certified, the court shall determine, by employing a rigorous analysis, if the party or parties requesting class certification have proved its or their entitlement to class certification under Rule 23 of the Tennessee Rules of Civil Procedure. The burden of coming forward with such proof shall at all times be on the party or parties seeking certification, and if such proof shall not have been adduced, the

court shall not order certification of the class. In making this determination, the court shall analyze all factors required by Rule 23 of the Tennessee Rules of Civil Procedure for certification of a class and shall not order certification unless all such factors shall have been established. In announcing its determination, the court shall place in the record of the action a written order addressing all such factors and specifying the evidence, or lack of evidence, on which the court has based its decision with regard to whether each such factor has been established. In so doing, the court may treat a factor as having been established if all parties to the action have so stipulated on the record and if the court is satisfied that such factor has been proven to have been established.

(f) Nothing in this section shall affect, or be construed to affect, Rule 12 of the Tennessee Rules of Civil Procedure or Rule 56 of the Tennessee Rules of Civil Procedure, including the provisions of Rule 56.07 of the Tennessee Rules of Civil Procedure.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.